

1 THE HONORABLE TIMOTHY W. DORE
2 Chapter 7
3 Place: 700 Stewart St., Court Room 8106
4 Seattle, WA 98101
5 Hearing Date: July 20, 2018
6 Time: 9:30 a.m.
7 Response Date: July 13, 2018

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9
10 UNITED STATES BANKRUPTCY COURT
11 WESTERN DISTRICT OF WASHINGTON

12 In Re: No. 15-16254

13 Jason Wesley Davis,

14 Debtor.

15 TRUSTEE'S RESPONSE AND OPPOSITION TO
16 DEBTOR'S MOTION TO DISMISS
17 CHAPTER 7 CASE

18 The trustee, Ronald G. Brown, by and through his attorney, Michael P. Klein, responds to the debtor's
19 motion to dismiss this Chapter 7 case as follows.

20 A. The debtor's failure to cite any legal authority for his requested relief is sufficient to deny his
21 motion to dismiss.

22 The debtor simply fails to cite any statute or legal authority that would allow him to seek dismissal
23 based on "unreasonable delay." For that reason alone, the motion to should not be granted.

24 In any event, unreasonable delay does not support the debtor's motion to dismiss. The debtor's
25 attempt to blame the trustee for any delay is misplaced. There simply is no evidence that he did so for the
26 purpose of waiting until the home gained value. Simply stating so does not make it so. At most, the
27 statements by the debtor and debtor's counsel are speculative.

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1 Delay is in fact grounds for not dismissing this case and keeping it open. Dismissal is not warranted
2 because creditors may be prejudiced after the passage of considerable amount of time because they have been
3 prevented from collecting amounts owed to them while in bankruptcy. In re Smith, 507 F.3d 64, 72 (2nd Cir.
4 2007).

5 Furthermore, there are safeguards in place that are readily available for the debtor to take advantage
6 of. Those safeguards include the ability of the debtor to move for abandonment at the outset of the case, in
7 order to remove assets with limited equity or no equity from the bankruptcy estate. See, In re Chappell, 373
8 B.R. 73, 82–83 (B.A.P. 9th Cir. 2007), aff'd sub nom. In re Gebhart, 621 F.3d 1206 (9th Cir. 2010). The
9 debtor filed Chapter 11 on October 22, 2015 (doc. #1) and the case was converted on June 23, 2016 (doc.
10 #46). During that time, the debtor, acting as debtor in possession, had most of the powers of a trustee and
11 could have moved for abandonment, but did not do so. In addition, while in Chapter 7, the debtor could
12 have filed a motion to compel abandonment pursuant to 11 U.S.C. §554(b).
13

14 B. The debtor has not established “cause” for dismissal pursuant to 11 U.S.C. § 707(a).

15 The right to voluntarily dismiss a chapter 7 case is not absolute. A debtor must establish “cause” for
16 dismissal under 11 U.S.C. § 707(a). In re Smith, 507 F.3d 64, 72 (2d Cir. 2007); In re Hickman, 384 B.R.
17 832, 840 (9th Cir. BAP 2008). “Cause” is not defined in 11 U.S.C. § 707(a). Id. According to the 9th
18 Circuit BAP, “ the totality of the circumstances” should be considered in evaluating cause for dismissal and
19 plain legal prejudice. Hickman at 840. The debtor bears the burden of proof. Id. at 841. Some courts
20 have considered the following factors:
21

22

- 23 1. whether all of the creditors have consented;
- 24 2. whether the debtor is acting in good faith;
- 25 3. whether dismissal would result in a pre-judicial delay in payment;
- 26 4. whether dismissal would result in a reordering of priorities;
- 27 5. whether there is another proceeding through which the payment of claims can be handled;
- 28 6. whether an objection to discharge, an objection to exemptions, or a preference claim is pending.

TRUSTEE’S RESPONSE AND OPPOSITION
TO DEBTOR’S MOTION TO DISMISS
CHAPTER 7 CASE - 2

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1 See In re Timmerman, 379 B.R. 838, 845 (Bankr.N.D.Iowa 2007); In re Maixner, 288 B.R. 815, 817
2 (8th Cir. BAP 2003); In re Hopper, 404 B.R. 302, 308 (Bkrtcy.N.D.Ill. 2009) (court denied debtor's request to
3 dismiss notwithstanding the debtor's mistaken belief that her residence would be completely exempt and
4 despite the debtor's claim that she had the ability and intent to pay creditors outside of bankruptcy); In re
5 Jabarin, 395 B.R. 330 (Bankr. E.D.Pa. 2008)(noting that the tests are generally the same no matter what
6 factors are considered). Considering the factors noted above, the debtor motion should be denied for the
7 following reasons:
8

9 First, because there is no evidence that all creditors have consented to dismissal, this factor weighs against
10 the debtor.
11

12 Second, the debtor has not entirely been acting in good faith. This is the fourth bankruptcy case that the
13 debtor has had since 2009. (doc. #25) Declaration of Young-Mi Petteys, p. 2, line 1-7. By filing bankruptcy
14 so many times, it is clear that the debtor has consistently created a pattern of delay.
15

16 Third, dismissal would result in prejudicial delay in payment to creditors. There is no dispute that the
17 debtor has the stated desire to pay his creditors, but that alone is deficient. There is no assurance that the
18 debtor has the ability to pay any creditors outside of bankruptcy. No proof, such as financial statements, past
19 pay stubs or the like, have been presented to demonstrate income. He has also not demonstrated what he
20 anticipates his expenses to be in the future. Without some proof of income and expenses, there is no
21 assurance that he will have the ability to pay any creditors.
22

23 Conversely, there is assurance that the trustee will pay creditors if this case remains in bankruptcy. The
24 sale of the debtor's home will most likely generate funds that will allow creditors to be paid. See Declaration
25 of Real Estate Broker Kai Rainey. The debtor agrees that may happen. "Legal prejudice is found to exist
26 where assets which would otherwise be available to creditors are lost because of the dismissal." Hopper, at
27 307. The debtor admits that there was no equity in the home when he filed bankruptcy or at the time the
28

TRUSTEE'S RESPONSE AND OPPOSITION
TO DEBTOR'S MOTION TO DISMISS
CHAPTER 7 CASE - 3

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1 case was converted. The debtor listed the home as having a value of 1,182,399.00 with secured debt of
2 1,283,460.00. See Balance of Schedules (doc. #55) filed on July 11, 2016. The debtor did not claim an
3 exemption in the home.
4

5 The debtor has not set forth a plan of how, when or in what priority he will pay secured creditors, priority
6 creditors first and general unsecured creditors. The debtor simply claims that he will “deal with his
7 creditors.” That is no assurance, just an empty promise at most. “Absent court oversight of payment [of
8 creditors by the debtor], creditors are prejudiced. They bear the risk of not being paid, a very unlikely risk in a
9 chapter 7 case. The method for insuring payment of creditors out of any non-exempt portion of the estate's
10 assets is through administration under the trustee system.” In re Fulton, 339 B.R. 698, 701 (Bankr.N.D.Iowa
11 2006). See also In re Bartee, 317 B.R. 362, 366 (9th Cir. BAP 2004)(“debtors' plan for liquidating assets
12 was too speculative to establish the lack of prejudice that is a prerequisite to dismissal.”).
13

14 Furthermore, the debtor claims that “during June 2016, when the case was converted to Chapter 7, the
15 home's fair market value was under \$1.2 million...” See Debtor's Notice of Motion and Hearing..., p. 5,
16 line 12 – 14. However, what the debtor does not point out is that any increase in value in the home goes to
17 the benefit of the estate. The Ninth Circuit has clearly stated:
18

19 The bankruptcy code states that a bankruptcy estate is comprised of:
20

21 Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are
22 earnings from services performed by an individual debtor after the commencement of the case.
23

24 11 U.S.C. §541(a)(6). We interpret this language to mean that appreciation enures to the bankruptcy
25 estate, not the debtor.
26

27 In re Reed, 940 F.2d 1317, 1323 (9th Cir. 1991) (internal citations omitted)(emphasis added). Reed therefore
28 created a bright-line rule. When the bankruptcy estate retains an interest in property, all appreciation of such
property enures to the benefit of the estate. This is consistent with statutory construction. No matter what

TRUSTEE'S RESPONSE AND OPPOSITION
TO DEBTOR'S MOTION TO DISMISS
CHAPTER 7 CASE - 4

Michael P. Klein
Attorney at Law
330 Madison Ave. S., Suite 110
Bainbridge Island, WA 98110
(206) 842-3638

1 the general provisions of the rest of the Bankruptcy Code state, since §541(a)(6) is so specific it prevails over
2 any other general provisions that could be interpreted to the contrary. "It is a well-settled principle of
3 construction that specific terms covering the given subject-matter will prevail over general language of the
4 same or another statute which might otherwise prove controlling." Kepner v. U.S., 195 U.S. 100, 24 S.Ct.
5 797, ____ (1904). It is also consistent with the "snapshot rule" that exemptions and value must be
6 determined on the date of filing as set forth in the case of In re Jacobson, 676 F.3d 1193 (9th Cir. 2012).
7 Since, the debtor did not have any equity in the property at the date of filing, there was nothing to exempt.
8 Therefore, any increase in value goes to the estate to pay creditors.

9
10 Fourth, there is no assurance that dismissal would not result in a reordering of priorities. While in
11 Chapter 7, there is assurance that the trustee will pay creditors according to the priorities pursuant to 11
12 U.S.C. §726 under the supervision of the Court and the United States Trustee. Creditors have filed claims as
13 set forth in the claims register. See copy of claims register attached as Exhibit A. The claims are a mix
14 bag of priority, secured and general unsecured claims.

15
16 Fifth, the debtor has not identified any other proceeding through which the payment of claims can be
17 handled.

18 Sixth, there is no objection to discharge, an objection to exemptions, or a preference claim is pending.

19
20 II. Conclusion

21
22 Wherefore, the trustee seeks an order consistent with the foregoing.

23 DATED this 13th day of July, 2018.

24
25 /s/Michael P. Klein
Michael P. Klein, WSBA #18079
Attorney for Chapter 7 Trustee

26
27
28 TRUSTEE'S RESPONSE AND OPPOSITION
TO DEBTOR'S MOTION TO DISMISS
CHAPTER 7 CASE - 5

Michael P. Klein
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330 Madison Ave. S., Suite 110
Bainbridge Island, WA 98110
(206) 842-3638

Western District of Washington

Claims Register

Exhibit A

[15-16254-TWD Jason Wesley Davis Converted 06/23/2016](#)

Judge: Timothy W. Dore

Chapter: 7

Office: Seattle

Last Date to file claims: 03/06/2017

Trustee: Ronald G. Brown

Last Date to file (Govt):

Creditor: (955641030) Internal Revenue Service Centralized Insolvency Operati PO Box 21126 Philadelphia, PA 19114-0326		Claim No: 1 <i>Original Filed</i> <i>Date:</i> 11/18/2015 <i>Original Entered</i> <i>Date:</i> 11/18/2015	Status: <i>Filed by:</i> CR <i>Entered by:</i> Internal Revenue Service <i>Modified:</i>
Amount claimed: \$174823.23			
Secured claimed: \$0.00			
Priority claimed: \$103561.76			
History:			
Details	<input checked="" type="radio"/> 1-1	11/18/2015	Claim #1 filed by Internal Revenue Service, Amount claimed: \$174823.23 (Internal Revenue Service)
Description:			
Remarks: (viewable to the court staff)			

Creditor: (955684957) Capital One Bank (USA), N.A. PO Box 71083 Charlotte, NC 28272-1083		Claim No: 2 <i>Original Filed</i> <i>Date:</i> 12/08/2015 <i>Original Entered</i> <i>Date:</i> 12/08/2015	Status: <i>Filed by:</i> CR <i>Entered by:</i> American InfoSource LP <i>Modified:</i>
Amount claimed: \$421.01			
History:			
Details	<input checked="" type="radio"/> 2-1	12/08/2015	Claim #2 filed by Capital One Bank (USA), N.A., Amount claimed: \$421.01 (American InfoSource LP)
Description:			
Remarks: (viewable to the court staff)			

Creditor: (955712738) PUGET SOUND ENERGY Vendor Collections DeptBOT-02G PO BOX 97034 Bellevue, WA 98009-7034		Claim No: 3 <i>Original Filed</i> <i>Date:</i> 01/19/2016 <i>Original Entered</i> <i>Date:</i> 01/19/2016	Status: <i>Filed by:</i> CR <i>Entered by:</i> WebClaimUser <i>Modified:</i>
Amount claimed: \$1941.85			
History:			
Details	<input checked="" type="radio"/> 3-1	01/19/2016	Claim #3 filed by PUGET SOUND ENERGY, Amount claimed: \$1941.85 (WebClaimUser)
Description: (3-1) Account Number (last 4 digits):7321			
Remarks: (viewable to the court staff)			

Creditor: (955717542)
United States Trustee
700 Stewart Street
Suite 5103
Seattle, WA 98101

Claim No: 4
Original Filed
Date: 01/25/2016
Original Entered
Date: 01/25/2016

Status:
Filed by: CR
Entered by: Karen UST Staff - Gunter
Modified:

Amount claimed: \$2608.17

History:

Details [4-1](#) 01/25/2016 Claim #4 filed by United States Trustee, Amount claimed: \$2608.17 (UST Staff - Gunter, Karen)

Description: (4-1) General Unsecured Claim

Remarks: (viewable to the court staff)

Creditor: (955733240)
Capital One Auto Finance, division Capital One NA
P.O. Box 201347
Arlington, TX 76006

Claim No: 5
Original Filed
Date: 02/10/2016
Original Entered
Date: 02/10/2016

Status:
Filed by: CR
Entered by: WebClaimUser
Modified:

Amount claimed: \$19009.11

Secured claimed: \$18000.00

History:

Details [5-1](#) 02/10/2016 Claim #5 filed by Capital One Auto Finance, division Capital One NA, Amount claimed: \$19009.11 (WebClaimUser)

Description: (5-1) Account Number (last 4 digits):4278

Remarks: (viewable to the court staff)

Creditor: (955795137)
Navient Solutions Inc.
220 Lasley Ave
Wilkes-Barre, PA 18706

Claim No: 6
Original Filed
Date: 04/05/2016
Original Entered
Date: 04/05/2016

Status:
Filed by: CR
Entered by: Sallie Mae
Modified:

Amount claimed: \$106652.98

History:

Details [6-1](#) 04/05/2016 Claim #6 filed by Navient Solutions Inc., Amount claimed: \$106652.98 (Sallie Mae)

Description:

Remarks: (viewable to the court staff)

Creditor: (955733240)
Capital One Auto Finance, division Capital One NA
P.O. Box 201347
Arlington, TX 76006

Claim No: 7
Original Filed
Date: 04/05/2016
Original Entered
Date: 04/05/2016

Status:
Filed by: CR
Entered by: WebClaimUser
Modified:

History:

Details [7-1](#) 04/05/2016 Claim #7 filed by Capital One Auto Finance, division Capital One NA, Amount claimed: \$22961.99 (WebClaimUser)

Description: (7-1) Account Number (last 4 digits):1581

Remarks: (viewable to the court staff)

Amount	claimed:	\$22961.99		
Secured	claimed:	\$22961.99		

History:

Details	<input checked="" type="radio"/>	7-1	04/05/2016	Claim #7 filed by Capital One Auto Finance, division Capital One NA, Amount claimed: \$22961.99 (WebClaimUser)
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Description: (7-1) Account Number (last 4 digits):1581

Remarks: (viewable to the court staff)

Creditor: (955717542)
 United States Trustee
 700 Stewart Street
 Suite 5103
 Seattle, WA 98101

Claim No: 8
Original Filed
Date: 06/30/2016
Original Entered
Date: 06/30/2016

Status:
Filed by: CR
Entered by: Karen UST Staff - Gunter
Modified:

Amount	claimed:	\$1626.84		
Priority	claimed:	\$1626.84		

History:

Details	<input checked="" type="radio"/>	8-1	06/30/2016	Claim #8 filed by United States Trustee, Amount claimed: \$1626.84 (UST Staff - Gunter, Karen)
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Description: (8-1) Administrative Proof of Claim

Remarks: (viewable to the court staff)

Creditor: (956008585)
 Capital One Auto Finance,
 a division of Capital One, N.A.
 P.O. Box 165028
 Irving, TX 75016

Claim No: 9
Original Filed
Date: 12/16/2016
Original Entered
Date: 12/16/2016

Status:
Filed by: CR
Entered by: WebClaimUser
Modified:

Amount	claimed:	\$34357.56		
Secured	claimed:	\$34357.56		

History:

Details	<input checked="" type="radio"/>	9-1	12/16/2016	Claim #9 filed by Capital One Auto Finance,, Amount claimed: \$34357.56 (WebClaimUser)
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Description: (9-1) Account Number (last 4 digits):3497

Remarks: (viewable to the court staff)

Creditor: (956009697)
 Navient Solutions, Inc.
 P.O. Box 9640
 Wilkes-Barre, PA 18773-9640

Claim No: 10
Original Filed
Date: 12/19/2016
Original Entered
Date: 12/19/2016

Status:
Filed by: CR
Entered by: Sallie Mae
Modified:

Amount	claimed:	\$24701.29		
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History:

Details	<input checked="" type="radio"/>	10-1	12/19/2016	Claim #10 filed by Navient Solutions, Inc., Amount claimed: \$24701.29 (Sallie Mae)
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Description:

Remarks: (viewable to the court staff)

Creditor: (956009697)
Navient Solutions, Inc.
P.O. Box 9640
Wilkes-Barre, PA 18773-9640

Claim No: 11
Original Filed
Date: 12/19/2016
Original Entered
Date: 12/19/2016

Status:
Filed by: CR
Entered by: Sallie Mae
Modified:

Amount claimed: \$46941.88

History:

[Details](#) [11-1](#) 12/19/2016 Claim #11 filed by Navient Solutions, Inc., Amount claimed: \$46941.88 (Sallie Mae)

Description:

Remarks: (viewable to the court staff)

Creditor: (955712738)
PUGET SOUND ENERGY
Vendor Collections DeptBOT-02G
PO BOX 97034
Bellevue, WA 98009-7034

Claim No: 12
Original Filed
Date: 01/11/2017
Original Entered
Date: 01/11/2017

Status:
Filed by: CR
Entered by: WebClaimUser
Modified:

Amount claimed: \$3416.12

History:

[Details](#) [12-1](#) 01/11/2017 Claim #12 filed by PUGET SOUND ENERGY, Amount claimed: \$3416.12 (WebClaimUser)

Description: (12-1) Account Number (last 4 digits):7321

Remarks: (viewable to the court staff)

Claims Register Summary

Case Name: Jason Wesley Davis

Case Number: 15-16254-TWD

Chapter: 7

Date Filed: 10/22/2015

Total Number Of Claims: 12

Total Amount Claimed*	\$439462.03
Total Amount Allowed*	

*Includes general unsecured claims

The values are reflective of the data entered. Always refer to claim documents for actual amounts.

	Claimed	Allowed
Secured	\$75319.55	
Priority	\$105188.60	
Administrative		

PACER Service Center

Transaction Receipt

07/13/2018 09:27:26

PACER Login:	kl0083:2581535:0	Client Code:	
Description:	Claims Register	Search Criteria:	15-16254-TWD Filed or Entered From: 1/1/1980 Filed or Entered To: 7/13/2018
Billable Pages:	2	Cost:	0.20